

No. 14/13/87-6Lab/456 —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula *versus* Prem Sukh.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 102 of 90

Date of receipt : 5-3-1990
Date of decision : 7-3-1995

SHRI JIJIM SIKH, S/O SAT RAM, V.P.O. ANANDGARH, TEHSIL AND DISTRICT SIRSA
... *Applicant*
versus

**CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURE MARKETING BOARD,
PANCHKULA (AMBALA)**
... *Respondent management*

Present :

Shri V.K. Bansal, for the workman.
Shri Arun Malhotra, for the management.

AWARD

In exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Prem Sukh and the above mentioned management for adjudication to this Court,—*vide Labour Department letter No. Hsr/83—89/8983-88, dated 28th February, 1990* :—

Whether termination of services of Prem Sukh is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman he was appointed as Clerk and was posted in Market Committee, Kalanwali,—*vide* order dated 27th July, 1987, and he continued as such upto 26th October, 1987. He was again appointed as clerk—*vide* order dated 31st October, 1987, and his services were terminated on 2nd February, 1988. It is alleged that he was given third spell of appointment on 8th April, 1988, and he continued as such till 27th May, 1988 and thereafter he was not allowed to work. According to the workman the termination of his services amounted to "illegal retrenchment" and the action of the management was malafidious and unfair labour practice, because he was close to attain a year's continuous service (240 days), within the meaning of Section 25-B of the Act. It was further stated that termination of his services was in violation of Section 25-H of the Act, as the management appointed a number of clerks including one Arjan Singh after 27th May, 1988, and it was claimed that aforesaid Arjan Singh was still in service. He, therefore, prayed for reinstatement, with full back wages and other consequential benefits.

3. The management, in its written statement, did not deny that the workman was appointed for 89 days each for three spells but asserted that termination of services of the applicant was a result of non-renewal of contract of service, and as such, it did not amount to "retrenchment", as defined in Section 2(oo) of the Act. Several preliminary objections were also raised, as they are reflected in the following issues framed on 16th October, 1990 by my learned predecessor :—

1. As per terms of reference.
2. Whether the worker is not covered by the definition of workman ?
3. Whether the present case does not amount to retrenchment ?
4. Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri V.K. Bansal, A.R. of the workman and Shri Arun Malhotra, A.R. of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 & 3 :

5. Both these issues are interconnected and as such, etc being taken up together, for purposes of facility.

6. Although Prem Sukh has appeared as his own witness, as WW-1, and has adduced in evidence his three appointment letters Ex.W-1, Ex.W-3, and Ex.W-5, each for a period of 89 days, and has also adduced in evidence relieving orders as Ex.W-2, Ex.W-4, and Ex.W-6, but during arguments, it was admitted by both the authorized representatives of the parties, that the workman had worked for a total period of 225

days in all. Shri Arun Malhotra, A.R. of the management, therefore, stressed that since the workman had not put in 240 days service, he was not entitled to any relief under the Act, and it was not necessary for the management to comply with the provisions of Section 25-F of the Act. Shri Arun Malhotra, A.R. of the management, in this connection, laid reliance on the authority reported as **Karnal Central Coop. Bank Ltd., Karnal through its Management Director versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1994(1) PLR-310.**

7. On the other hand, Shri V.K. Balsel, A.R. of the workman argued hotly that since the services of the workman were terminated in anticipation and by circumventing the accrual of right on him on account of one year's continuous service (240 days) when he was close to attain this right, the action of the management amounted to "unfair labour practice" and in support of his argument, he relied upon the observations made by Punjab and Haryana High Court in the authority reported as **The Gurdaspur Central Cooperative Bank Ltd. versus The Presiding Officer, Labour Court, Gurdaspur and Others, 1991(1)SLR-209.**

8. I have given my careful thought to the rival submissions made at the bar by A.R.s of the parties. So far as the authority of **Karnal Central Coop. Bank Ltd. versus Presiding Officer, Labour Court, Rohtak (Supra)** relied upon by the A.R. of the management is concerned, the facts in this case are distinguishable and the workman had worked for a total period of 185 days only. It was in this context that it was held that there was a distinction between those with service of 240 days and more than others with less service. However, in the authority of **Gurdaspur Central Coop. Bank versus Presiding Officer, Labour Court, Gurdaspur (Supra)**, reliance was placed on the following observations of Division Bench judgment of Punjab and Haryana High Court in CWP No. 3766 of 1984, delivered on 23rd January, 1984 :—

"To conclude, we hold that the practice of retrenching a workman, close to his attaining a year's continuous service in order to frustrate his attaining rights under Chapter V-A of the Industrial Disputes Act, is an unfair labour practice, unless there are reasons with the employer with regard to the conduct and service of the workman being unsatisfactory. How close should be such period towards attaining a year's continuous service and to come within the purview of "unfair labour practice" is a question dependent on the facts and circumstances of each case. We do not propose to lay down any guidelines on that aspect".

9. It has been held above that each case is to be decided on the facts and circumstances thereof. In our case, admittedly, the workman had put in 225 days service, and the workman can not be said to be close to attain a year's continuous service, and in this case, the action of the management can not be labelled as unfair labour practice. In a similar case reported as **Dharam Paul versus State of Haryana, 1992 (1) RSJ-723**, where the workman has completed 222 days job, the workman was not given any relief.

10. The workman has also challenged his termination on the ground of Section 25-H of the Act, and it was specifically pleaded that one Arjan Singh was appointed on 25th June, 1988 as a clerk. This was so pleaded in para 2 of the claim statement. This part of the pleadings was not specifically denied by the management in the written statement. Although it stands established that the management had appointed Arjan Singh and others, after terminating the services of the workman, but the fact remains that the dispute regarding re-employment of workman in terms of Section 25-H of the Act, had not been referred to this Court and therefore, this question can not be adjudicated upon by this Court. What has been referred in this instant case is the dispute relating to termination of services of the workman, and not the question of his re-employment, and re-employment pre-supposes a valid termination. In the first instance, and therefore, constitute a different cause of action. It was held by Punjab and Haryana High Court in the authority of **Karnal Central Co-op Bank Ltd. versus Presiding Officer, Labour Court, Rohtak (Supra)** that Labour Court can go in to the question of re-employment only if a reference is made in this regard, and not otherwise. The workman is, therefore, not entitled to any relief under Section 25-H of the Act, as well.

11. In the light of discussion above, both these issues are answered in favour of the management.

Issue No 2 :

12. This issue was not pressed by the A.R. of the management, and was conceded to, by his during arguments. This issue is, therefore, decided against the management.

Issue No. 4-Relief :

13. In view of my findings on the above issues, the termination of services of the petitioner is held as justified and in order and the petitioner is not entitled to any relief in this case. The reference is answered accordingly. Costs made easy.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

The 7th March, 1995.

Endorsement No. 310, dated 7th March, 1995.

A copy, with two spare copies, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court.
Hisar.

The 6th April, 1995

No. 14/13/87-6 Lab./535.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, in respect of the dispute between the workman and the management of M/s. Sanglo Plastic Faridabad, *versus* Subhash Singh.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Ref. No. 732/93

between

THE MANAGEMENT OF M/S. SANGLO PLASTIC, 21/3 MATHURA ROAD, OPPOSITE PARTAP STEEL, FARIDABAD

versus

THE WORKMAN NAMELY SHRI SUBHASH SINGH C/O SHRI SUBHASH SHARMA,
LOK MAZDOOR SANGTHAN, HANUMAN MANDIR, SECTOR-22,
FARIDABAD

Present :

None.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 46388—93, dated the 1st December, 1993:—

Whether the termination of services of Shri Subhash Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. Notice were sent to both the parties for appearance. Shri K. L. Sharma, authorised representative appeared on behalf of the workman.

3. Notice sent to the management was received back with the report that the firm had since been closed. Dusti summons were given to the workman for getting service effecting on the management but to no effect.

4. Today none is present on behalf of the workman. In the circumstance, the court is left with no option but to pass no claim award and it is passed accordingly.

U. B. KHANDUJA,

The 15th March, 1995.

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 386, dated 15th March, 1995

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

The 6th April, 1995

No. 14/13/87-6Lab./538.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workmen and the management of M/s Beco Engineering Company Ltd., Ballabgarh *versus* Sumer Singh.

**IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD**

Reference No. 205/90

between

**THE MANAGEMENT OF M/S BECO ENGINEERING COMPANY LTD., 23/7, DELHI-MATHURA
ROAD, BALLABGARH**

versus

**THE WORKMAN, NAMELY, SHRI SUMER SINGH, C/O HIND MAZDOOR SABHA, 29-A,
SAHID CHOWK, FARIDABAD**

Present :

Workman in person.

Sh. K. P. Aggarwal, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 19188—93, dated 9th May, 1990 :—

"Whether the termination of services of Shri Sumer Singh is legal and justified? If not, to what relief, is he entitled to?"

2. Both the parties were summoned and they appeared. On the pleadings of the parties issues were framed. Both the parties adduced evidence. Arguments were heard on one issue.

3. At the aforesaid stage, the parties have amicably settled the dispute. The workman has been paid a sum of Rs. 85,000 through cheque by way of full and final settlement of his dues. He has given up his right to his reinstatement. The statements of both the parties have been recorded. The matter in dispute referred for adjudication does not survive. The award is passed accordingly.

U. B. KHANDUJA,

The 13th March, 1995.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 377, dated 14th March, 1995.

A copy, with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government, Haryana, Labour department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.